

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

50801 97176

FILE: B-183926

DATE: June 19, 1975

MATTER OF: Reformation of Contract

DIGEST:

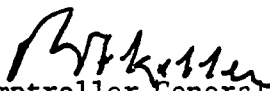
Contract reformation based on mutual mistake is allowed where record shows that oral agreements were not incorporated into contract amendments. Oral agreements indicate intent by both parties that amendment prices would be subject to adjustment based on actual overhead costs as determined by GSA audit.

The General Services Administration (GSA) has requested our approval for reforming several contract amendments to architect-engineer fixed price contract number GS-00B-00905 with Chloethiel Woodard Smith and Associated Architects (CWSAA) that was entered into on September 17, 1971, for the design of a number of facilities. Specifically, the GSA states that contract Amendment Numbers 10, 11 and 12, all executed on or after May 19, 1974, failed to reflect the actual agreements reached by GSA and CWSAA regarding the price terms.

The contracting officer and the contractor have submitted statements indicating that they had agreed to negotiate each of these three amendments in a firm amount based on overhead rates of 74 percent and 75 percent, respectively, for the contractor and for its principal subcontractor pending completion of a GSA audit to establish the actual overhead rates. Upon determination of the actual rates, it was agreed orally that an adjustment would be made to the amendment prices to compensate the contractor for any difference. However, Amendment Nos. 10, 11 and 12 were written in terms of a firm amount without any provision for subsequent price adjustment for actual overhead. The negotiator stated that he was unaware of the necessity for including such a provision in the amendment documents in order to carry out the oral understanding.

It is reported that actual overhead rates have been determined applicable to Amendment Nos. 10, 11 and 12 and that these rates exceed the rates of 74 and 75 percent used in negotiating the amendment prices. Accordingly GSA seeks authorization to reform Amendment Nos. 10, 11 and 12 in the manner indicated.

Reformation of a contract is authorized where it can be shown that by reason of mutual mistake the contract as written does not reflect the actual agreement of the parties, and it can be established what the actual agreement was or would have been but for the mistake. 39 Comp. Gen. 363, 365 (1959); 30 Comp. Gen. 220, 221 (1950). The record before us indicates that the parties intended to include in Amendment Nos. 10, 11 and 12 a price adjustment factor based on overhead. Since it appears from the record that this provision was omitted from the amendments by mutual mistake, these contract amendments, as executed, do not conform to the actual intention of the parties. Accordingly, Amendment Nos. 10, 11 and 12 of the contract may be reformed to reflect properly the true intent and agreement of the parties. B-166507, April 30, 1969; B-151611, June 21, 1963.


Deputy Comptroller General
of the United States